

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 564 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SAJANBA W/O DAPUJI VIHAI RANA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/04/2000

ORAL JUDGEMENT

1. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on December 7 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Smt. Sajanba,

wife of Dapuji Vihaji Rana of Amraiwadi, Ahmedabad, under the provisions of the said Act.

2. The detaining authority took into consideration five offences registered against the petitioner, so also the statements of two anonymous witnesses in respect of incidents dated November 10 and 23, 1999. The detaining authority considered the activities of the detenu as that of a bootlegger and observed that the petitioner is required to be immediately prevented from pursuing her activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Mr. Dave, learned advocate appearing for the petitioner, has restricted his arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. He has drawn attention of this Court to the fact that the statements of anonymous witnesses were verified on December 7, 1999 and on that very day, the order detention was passed. The authority, therefore, had no time to undertake the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu.

3.1 Mr. Dave submitted further that as regards the offences registered against the detenu, the first three offences relate to incidents prior to August 1998 and, therefore, can be considered as stale grounds. After August 1998, the offence registered against the detenu is in September 1999, namely C.R. No.5542 of 1999 and, therefore, earlier incidents cannot be considered as being stale. As regards C.R. No.5542 of 1999, Mr. Dave submitted that the copy of the F.I.R. furnished to the detenu is not legible. As regards C.R. No.1108 of 1999, he submitted that the F.I.R. relating to this Crime Register number is not legible. The right of the detenu is, therefore, adversely affected. Mr. Dave further submitted that when the order of detention was passed, the petitioner was on police remand and in absence of compelling circumstances, the order is passed and, therefore, the order itself is bad. He has placed reliance on the decision in the case of Sanjeev Kumar Aggarwal v. Union of India and Ors. A.I.R. 1990 SC 1202. He submitted that the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government

Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded on December 6, 1999. The same have been verified by the detaining authority on December 7, 1999 and the order is passed on that very day. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (*Bai Amina v. State of Gujarat & Ors.*, 1981 GLR 1186 and *Kalidas Chandubhai Kahar v. State of Gujarat & Ors.*, 1993(2) GLR 1659).

6. Adverting to the offences registered against the detenu, it may be noted that C.R. No.5138 of 1998, 5261 of 1998 and 5325 of 1998 of Amraiwadi Police Station relate to incidents of March 12, 1998, June 14, 1998 and August 11, 1998. The order is passed in December 1999 and, therefore, there is substance in the argument advanced on behalf of the petitioner that these are stale grounds on which the order is passed. As regards the other two offences, namely, C.R. No.5542 and 1108 of 1999, the copies of the F.I.R. are found to be not legible. Learned Assistant Government Pleader, in all fairness, after inspecting the same, concedes to this point.

7. Apart from this, the order suffers from another defect, namely, that when the order was passed, the

detenu was on police remand. The detaining authority has detained him while he was on police remand and no compelling reasons are shown by the detaining authority and, in light of decision of the Apex Court in the case of Sanjeev Kumar Aggarwal v. Union of India, A.I.R. 1990 SC 1202, the order cannot be upheld. The petition, therefore, deserves to be allowed.

7. In the result, the petition is allowed. The impugned order of detention dated December 7, 1999, passed against the detenu is hereby quashed. The detenu-Smt. Sajanba, wife of Dapuji Vihaji Rana is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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